

***United States Court of Appeals  
for the Second Circuit***



**BRIEF FOR  
APPELLEE**



76-7497

To be argued by  
ROBERT S. HAMMER

UNITED STATES DISTRICT COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----X  
JAMES L. DILLARD,

Plaintiff-Appellant,

-against-

PEOPLE OF THE STATE OF NEW YORK,  
FAMILY COURT OF QUEENS COUNTY,  
ANNABELLE B. DILLARD, NEW YORK CITY  
TRANSIT AUTHORITY, NEW YORK CITY  
EMPLOYEES' RETIREMENT SYSTEM, CITY  
OF NEW YORK, H.D.A., RENT AND  
MAINTENANCE DEPARTMENT, K & G PLUMBING  
CORPORATION, BROOKLYN UNION GAS COMPANY,  
CONSOLIDATED EDISON, INC., THE BEDFORD  
SYUYVESANT YOUTH IN ACTION,

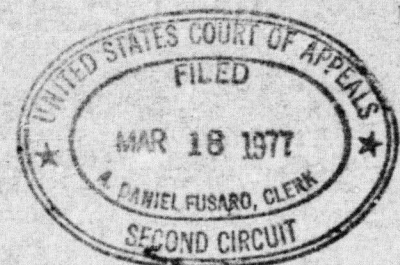
Defendants-Appellees.  
-----X

BRIEF FOR APPELLEES PEOPLE OF THE  
STATE OF NEW YORK AND FAMILY COURT,  
QUEENS COUNTY

LOUIS J. LEFKOWITZ  
Attorney General of the  
State of New York  
Attorney for Appellees  
People of the State of  
New York and Family  
Court, Queens County  
Office & P.O. Address  
Two World Trade Center  
New York, New York 10047  
Tel. No. (212) 488-3394

SAMUEL A. HIRSHOWITZ  
First Assistant Attorney General

ROBERT S. HAMMER  
Assistant Attorney General  
of Counsel





## TABLE OF CONTENTS

	<u>Page</u>
Question Presented. . . . .	1
Statement of the Case . . . . .	2
ARGUMENT - THE DISTRICT COURT PROPERLY DETER- MINED THAT IT WAS WITHOUT JURIS- DICTION AS TO A SUIT AGAINST THE PEOPLE OF THE STATE OF NEW YORK OR THE FAMILY COURT, QUEENS COUNTY . . .	3
Conclusion . . . . .	4

## TABLE OF AUTHORITIES

### Cases

Cheramie v. Tucker, 493 F. 2d 586 (5th Cir 1974). . . . .	4
Dillard v. Dillard ____ F. 2d ____, #74-1752 (Jan. 24, 1975) . . . . .	2
Dillard v. Family Court, 404 F. 2d 404 (2d Cir. 1968) . . . . .	2
Dillard v. Family Court, app. dis. 394 U.S. 825 (1969) . . . . .	2
Dillard v. N.Y.C.T.A. cert. den. 414 U.S. 839; 415 U.S. 939 (1974) . . . . .	2
Edelman v. Jordan, 415 U.S. 651 (1974) . . . . .	3
Fine v. City of New York, 529 F. 2d 70 (2d Cir. 1975) . . . . .	4



## Cases

	<u>Page</u>
Fitzpatrick v. Bitzer, 427 U.S. 445 (1976) . . .	3
Imbler v. Pachtman, ___ U.S. ___, 44 USLW 4250 (1976) . . . . .	3
Littleton v. Berbeling, 468 F. 2d 389 (7th Cir. 1972) rev'd 414 U.S. 488 (1974). . . .	4
Mitchum v. Foster, 407 U.S. 220 (1972) . . . . .	4
Pierson v. Ray, 386 U.S. 547 (1967) . . . . .	3
Powell v. Workmen's Compensation Board, 327 F. 2d 131 (2d Cir. 1964). . . . .	4
Samuels v. Mackell, 401 U.S. 66 (1971). . . . .	4
Thistlethwaite v. City of New York 497 F. 2d 339 (2d Cir.) cert. den. 95 S. Ct. 686 (1974) . . . . .	2
Younger v. Harris, 401 U.S. 37 (1971) . . . . .	4
Zuckerman v. Appellate Division, 42 F. 2d 625 (2d Cir. 1970) . . . . .	3

## Other Authorities

U.S. Const. Amend XI . . . . .	3
28 U.S.C. § 1343 . . . . .	2
42 U.S.C. § 1983 . . . . .	2

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----X

JAMES L. DILLARD, :

Plaintiff-Appellant, :

-against- :

PEOPLE OF THE STATE OF NEW YORK, :

FAMILY COURT OF QUEENS COUNTY,

ANNABELLE B. DILLARD, NEW YORK CITY:

TRANSIT AUTHORITY, NEW YORK CITY

EMPLOYEES' RETIREMENT SYSTEM, CITY :

OF NEW YORK, H.D.A., RENT AND

MAINTENANCE DEPARTMENT, K & G :

PLUMBING CORPORATION, BROOKLYN

UNION GAS COMPANY, CONSOLIDATED :

EDISON, INC., THE BEDFORD STUY-

VESANT YOUTH IN ACTION, :

Defendants-Appellees.:

-----X

BRIEF FOR APPELLEES PEOPLE OF  
THE STATE OF NEW YORK AND  
FAMILY COURT QUEENS COUNTY

Question Presented

Did the District Court correctly dismiss this  
action for want of federal subject matter jurisdiction?



Statement of the Case

(1)

This is an appeal in forma pauperis by plaintiff, pro se from an order of the District Court for the Eastern District of New York, entered sua sponte, dismissing plaintiff's complaint for lack of federal jurisdiction.

As appears from the record below and the other papers filed by plaintiff, he seeks to litigate, apparently pursuant to 42 USC § 1983; 28 USC § 1343, a variety of claims; some arising out of his matrimonial problems, others a result of various brushes with corporate and governmental bureaucracy.

It should be pointed out that the same or similar issues have been raised in the federal courts on other occasions, Dillard v. Family Court, 404 F. 2d 404 (2d Cir. 1969); Dillard v. Family Court, app. dis. 305 U.S. 825 (1969) Dillard v. N.Y.C.T.A., cert. den. 414 U.S. 839; 415 U.S. 939 (1974); Dillard v. Dillard, \_\_\_\_ F. 2d \_\_\_\_, #74-1752 (Jan. 24, 1975).\*

\* Thus, the complaint would have been dismissable as res judicata if for no other reason, Thistlethwaite v. City of New York, 497 F. 2d 339 341 (2d Cir.) cert. den. 95 S. Ct. 686 (1974).



### ARGUMENT

THE DISTRICT COURT PROPERLY DETERMINED THAT IT WAS WITHOUT JURISDICTION AS TO A SUIT AGAINST THE PEOPLE OF THE STATE OF NEW YORK OR THE FAMILY COURT, QUEENS COUNTY

It is fundamental that suits for damages by a citizen against a state are not cognizable in the federal courts, U.S. Const., Amend XI, Edelman v. Jordan, 415 U.S. 651, (72-674 (1974)), except as specifically authorized by statute, Fitzpatrick v. Bitzer, 427 U.S. 445 (1976) a factor not present in the instant case.

It is equally fundamental that an action under 42 USC § 1983 may not be maintained against a court, since it is not a "person" within the meaning of the statute, Zuckerman v. Appellate Division, 421 F. 2d 625, 626 (2d Cir. 1970).

Even if the complaint named the individual judges, the action would still not lie, Imbler v. Pachtman, \_\_\_\_ U.S. \_\_\_\_, 44 U.S.L.W. 4250 (1976); Pierson v. Ray, 386 U.S. 547 (1967).

As to any claim for an injunction, judges acting

within their jurisdiction are immune from suits for federal civil rights law injunctions, except in the most extreme situations when a litigant cannot vindicate his rights through the state judicial system. Mitchum v. Foster, 407 U.S. 225, 243 (1972); Younger v. Harris, 401 U.S. 37 (1971); Samuels v. Mackell, 401 U.S. 66 (1971). Cf. Littleton v. Berberling, 468 F. 2d 389, 395-408 (7th Cir. 1972), rev'd. sub nom. O'Shea v. Littleton, 414 U.S. 488 (1974).

Courts that have recognized the right to obtain injunctive relief against judges have usually limited such relief to areas not involving judicial discretion; Cheramie v. Tucker, 493 F. 2d 586, 588, Ftn. 6, 7 (5th Cir. 1974).

The record demonstrates, that in this case, appellant's complaint against the State and the Family Court is simply his dissatisfaction with state court judgments properly rendered which have or could have been reviewed in the State's appellate courts. He fails to raise any federal question, Powell v. Workmen's Compensation Board 327 F. 2d 131 (2d Cir. 1964); Line v. City of New York, 529 F. 2d 70 (2d Cir. 1975).



CONCLUSION

THAT ORDER APPEALED FROM SHOULD  
BE AFFIRMED

Dated: New York, New York  
March 18, 1977

Respectfully submitted,

LOUIS J. LEFKOWITZ  
Attorney General of the  
State of New York  
Attorney for Appellees  
People of the State of New York  
and Family Court, Queens County

SAMUEL A. HIRSHOWITZ  
First Assistant Attorney General

ROBERT S. HAMMER  
Assistant Attorney General  
of Counsel



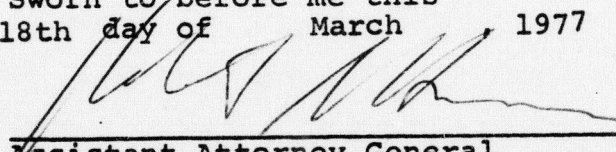
STATE OF NEW YORK     )  
                              : SS.:  
COUNTY OF NEW YORK    )

Ghislaine Salomon       , being duly sworn, deposes and  
says that she is employed       in the office of the Attorney  
General of the State of New York, attorney for Appellees  
herein. On the 18th day of March       , 1977, she served  
the annexed upon the following named person :

MR. JAMES L. DILLARD  
Appellant Pro se  
114-54 201st Street  
St. Albans, New York 11412

Appellant Pro se  
~~Attorney~~ in the within entitled Action       by depositing <sup>3</sup>  
a true and correct copy<sup>(a)</sup> thereof, properly enclosed in a post-  
paid wrapper, in a post-office box regularly maintained by the  
Government of the United States at Two World Trade Center,  
New York, New York 10047, directed to said Attorney at the  
address within the State designated by him       for that  
purpose.

Sworn to before me this  
18th day of March 1977

  
Assistant Attorney General  
of the State of New York

